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INDIGENOUS ISSUES

Written statement * submitted by the International Federation of Human Rights Leagues
(FIDH), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated
in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental
organization.

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In 1998 the International Federation of Human Rights League (FIDH) published the report of an observer mission to Chile entitled: "Les Pehuenche-Mapuche et le projet hydroélectrique de Ralco dans l'Alto Bio Bio: un peuple menacé." (The Pehuenche-Mapuche and the Ralco hydroelectric project in the Upper Bio Bio: a people under threat.) Since then, FIDH representatives have visited a number of indigenous communities in Chile and have followed the progress of the situation very closely in the past year.

Despite the desire expressed by the Government of Chile to give special attention to the indigenous peoples who comprise 10 per cent of Chile's population through the adoption of an Indigenous Act designed to promote their development by guaranteeing them access to land and water, their situation as regards economic, social and cultural rights and the recognition of their collective rights is slow to improve.

In the north of Chile, the Aymaras and the Atacameños are experiencing serious problems of access to water because of the activities of large mining companies in the Andes. According to the testimony we have received, the Atacameños consider that their human rights have been violated as a result of reprehensible and unwarranted practices of appropriation of part of their genetic heritage through blood-sampling or by taking samples from the bones of ancient mummies on display in various museums in their regions, possibly for commercial purposes.

On Easter Island, the Rapa Nui have to fight to keep control of their lives and territory in the face of the plans for expansion of the large tourist agencies.

In the south, the Mapuches are in the midst of a serious crisis due to the impact of public and private mega-projects and the cumulative effects of the usurpation of their land over many generations, particularly since the legislation privatizing collective ownership of their land passed by the dictator, Augusto Pinochet, who was recently placed under arrest in London on grounds of crimes against humanity and is likely to be brought to justice in Spain. An in-depth investigation by the Chilean Government on the consequences of Pinochet's acts in the case of the usurpation of the Mapuche lands could lead to reparation of the harm done to this people during the dictatorship. (It may be recalled that a number of Mapuche leaders were assassinated and disappeared during the dictatorship and that their organizations have been subjected to ferocious repression.)

Despite the Indigenous Act of 1993 which recognized the right of participation of the indigenous peoples and their right to the land, the rights of the Mapuche people have been seriously undermined as a result of policies of investment in large-scale forestry production. In the case of the Mapuche territories the extent of growth in these sectors has been such that the Mapuche organizations see it as a second occupation of Araucania, the reference being to the military occupation of their territory at the end of the last century.

* Mr. Claude Katz (France) and Mr. Thomas R. Burger (Canada), Report on mission to Chile. International Federation of Human Rights Leagues, special edition 258/3, Paris, 1998, published in French and Spanish.

The right of indigenous peoples to take part in decision-making in projects concerning their territory and seriously affecting their communities, as stipulated in Chile's Indigenous Act or more explicitly still in international law (ILO Convention) has been constantly infringed by the Chilean State in recent years.

The example of the Ralco project speaks volumes. Despite the initial expression of the wishes of the Pehuenche-Mapuche, despite the recommendations of FIDH and other national and international organizations, despite the views of experts and the opinions of two Directors of the National Indigenous Development Corporation (a Chilean state body responsible for the protection and development of the indigenous peoples) and the majority of its Board at the time, the Government continues to partner the private developers of the project (ENDESA-Chile which relies on Spanish capital from CONAMA) in endeavouring to break down the resistance of the families who refuse, as Chile's Indigenous Act gives them the right to do, to abandon their land.

The establishment in the indigenous territories of an economy based on the large-scale development of natural resources has rendered ineffectual the protection of the land as laid down in the Indigenous Act. The sheer size of the forestry developments on indigenous territory has virtually turned the communities into cramped little islands, with no possibility of expanding their farmland so as to provide for their own basic needs.

The big lumber companies have been able to buy up more than 1 million hectares in the heart of Mapuche territory over the last few decades, to the detriment of community land. With their plantations of introduced species of pine and eucalyptus, these huge forest developments now surround the Mapuche communities and threaten their very existence.

In their visits to the communities, the FIDH observers have seen the extreme poverty that exists there, the precarious nature of agriculture (soil-erosion, impossibility of enriching farmland for want of money, absence of machinery), a sanitary situation reminiscent of last century, a lack of roads to provide an outlet for the small surplus of produce and permit movement, many communities without electricity or means of communication, and under-resourced-schools with syllabuses which are just beginning to incorporate and transmit the Mapuche culture and language (bilingual intercultural education); on the other hand, the FIDH representatives have been able to witness the strength and determination of the Mapuche people to preserve (and sometimes rediscover) their culture and language and to have the Chilean State recognize their collective rights. The assertion of their cultural identity in terms of religion, language and politics is a phenomenon which is growing and expanding and bears witness to the vitality of the Mapuche people.

FIDH considers that, in view of the situation of the Mapuches in terms both of economic, social and cultural rights and of collective rights (self-government, territory, acceptance in Chile as a people), there are good grounds for increasingly frequent acts of civil disobedience and for the fact that the Mapuche organizations take part in national marches and land occupation and make their voices heard not only in Chile but in international forums too.

It may be noted that the Government is often incapable of responses other than increased repressive violence and largely unjustified arrests. In all the demonstrations which

took place in 1999, an alarming hardening of the relations between the Chilean Government and the Mapuche organizations was visible. For example, it was observed that the Office of the Intendant of Chile's VIII Region successfully requested the courts to agree that the State Internal Security Act should be applied to persons arrested in the course of clashes between the lumber companies and the Mapuche communities. FIDH considers that Chile is on the wrong track when it makes use of emergency measures of this type. It may be recalled that these laws require judges to pass down severe minimum sentences on the accused. We would like to mention that, following a clash in the region of Traigen, a Mapuche delegate who had come to Geneva to take part in United Nations work and visit the International Federation of Human Rights Leagues in Paris was arrested on his return to Santiago when he alighted from the plane.

FIDH notes that the Chilean Constitution, unlike those of other American countries, does not recognize its indigenous peoples or their territory, far less their right to self-government, even internally. In its report on Ralco it had recommended that the Chilean Government should ratify International Labour Organization Convention No. 169, which still today is the only valid legal international document for indigenous peoples. It finds it hard to understand the Chilean Government's unwillingness to commit itself firmly to a trend which is increasingly accepted internationally. In several countries, including Denmark, Norway and Canada, the collective rights of indigenous peoples are increasingly being recognized as a result of legislative measures and the signing of treaties.

Both the United Nations and the Organization of American States have recently gone more deeply into the matter as can be seen from their draft Declarations on the rights of indigenous peoples (even where the Declarations do not always satisfy the legitimate aspirations of indigenous peoples). These Declarations admit autonomy and self-government in domestic and local matters as a form of the right of peoples to self-determination. They also recognize the right of indigenous peoples to their currently owned and ancestral lands. Such rights include the right to control the use of the territory and the right to a share in the profits from natural resources, including the flora and fauna and soil and mineral resources.

FIDH calls on the Chilean Government to take account in its policies and acts of the legitimate nature of the present claims of Chile's indigenous peoples, whether in relation to their situation of extreme poverty (cf. UNDP report, 1998) and exclusion or the discrimination and racism still much in evidence in all spheres, or in their expression of the need for the recognition of their collective rights as a people and the requirement of territorial self-government within Chilean society. These are legitimate aspirations from the viewpoint of the development of international law for indigenous peoples.
